

Honorable Judge Theresa L Fricke

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOUNTAINEERS FOUNDATION, a
Washington public benefit corporation,

Plaintiff,

v.

THE MOUNTAINEERS, a Washington
non-profit corporation,

Defendant.

No.: 2:19-cv-01819-RSL-TLF

STIPULATED MOTION TO
MODIFY SCHEDULING ORDER

NOTE ON MOTION CALENDAR:
JANUARY 26, 2021

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 16(b)(4), Plaintiff Mountaineers Foundation ("Plaintiff" or "The Foundation") and Defendant The Mountaineers ("Defendant" or "The Mountaineers") (collectively, the "Parties") respectfully request that the Court extend each of the outstanding deadlines included in the Court's Scheduling Order (ECF No. 62) for a period of sixty (60) days in light of the unique and ongoing impact that the spread of the novel coronavirus continues to have on this case and the Parties' recent agreement to mediate their dispute.

II. BACKGROUND AND GROUNDS FOR RELIEF

On August 14, 2020, following the state-wide spread of the COVID-19 virus and the issuance of Washington Governor Jay Inslee's "Stay Home, Stay Healthy" order (the "Governor's Order"), the Parties filed a motion to extend all outstanding deadlines in this case for a period of

1 six (6) months based, in part, on the assumption that it would be safe to continue their ongoing in-
2 person discovery efforts within that six month period. That assumption was proven to be incorrect.
3 As of the date of this writing, the virus continues to present a threat to the health and safety of
4 Washingtonians, especially those over the age of 65; the Governor's Order was extended on three
5 occasions; and state-wide restrictions on non-essential gatherings are still in effect. While these
6 events have, no doubt, presented challenges in every case, this dispute has been uniquely affected.
7 Much of this case will turn on the testimony of individuals who were present on the date of the
8 formation of the Mountaineers Foundation in 1968. These individuals, due to their age, are
9 especially vulnerable to the virus. Moreover, many relevant witness in the present dispute have
10 disabilities, such as blindness, that prevent even 'virtual' or computer-assisted depositions from
11 being conducted without multiple third-party facilitators providing in-person assistance, a practice
12 prohibited by many assisted-living facilities. As a result, only one individual has been deposed to
13 date. Similar challenges have been presented by relevant documents that were created
14 contemporaneously with the Mountaineers Foundation in 1968, many of which were never
15 digitized and are likely held in the personal records of elderly individuals uniquely susceptible to
16 the virus. As a result, and out of an abundance of caution, many of these physical records, that
17 would require in-person review and duplication, have not yet been inspected.

18 Nevertheless, the Parties have been working diligently to pursue discovery using all
19 available electronic means and, over the past six months, have exchanged three rounds of discovery
20 requests. Based on a review of the electronic records exchanged to date, the Parties have also been
21 able to meaningfully assess the strength of their claims and make significant steps towards
22 settlement. Indeed, within the past week, the Parties have agreed to mediate the present dispute,
23 selected a mediator to assist in their discussions, and intend to pursue mediation in March, 2021.
24 These recent developments, and the limitations on further meaningful discovery imposed by the
25 ongoing effects of the coronavirus pandemic, have important implications for the Parties'
26 upcoming deadlines to submit their expert reports, the first of which falls on February 19, 2021.

Without an opportunity to review relevant discovery, the usefulness of the Parties' expert reports to the resolution of this matter will be unnecessarily limited. The same is true with respect to the Parties' ongoing good faith efforts at settlement and mediation that would be unduly constrained by the Parties' obligation to meet a number of contemporaneous deadlines that are presently included in the Court's Scheduling Order.

As such, in light of the above-noted February 19, 2021 deadline and unforeseen developments over the past six months, the Parties have met and conferred about this issue and agreed that good cause exists to extend each of the outstanding deadlines included in the Court's Scheduling Order (ECF No. 62) for a period of sixty (60) days.

III. RELIEF REQUESTED

The Parties respectfully request that each of the below deadlines included in the Court's Scheduling Order (ECF No. 62) be modified as follows:

Event	Former Deadline	Revised Deadline
Disclosure of plaintiff's expert witnesses	February 19, 2021	April 20, 2021
Disclosure of defendant's expert witnesses	March 19, 2021	May 18, 2021
Disclosure of rebuttal witnesses	April 16, 2021	June 15, 2021
Early Motion for Summary Judgment Deadline	April 30, 2021	June 29, 2021
All motions related to discovery must be noted on the motion calendar no later than the Friday before discovery closes pursuant to LCR 7(d) and LCR 37(a)(2)	July 23, 2021	September 21, 2021
Discovery (including meet-and-confer meetings) completed by	July 30, 2021	September 29, 2021
Last date to serve responses to interrogatories and responses to requests for production, and to take depositions; target date for scheduling settlement conference of attorneys	July 30, 2021	September 29, 2021
Dispositive Motion Deadline	August 27, 2021	October 26, 2021

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 26th day of January, 2021.

K&L GATES LLP

By /s/ Michael W. Meredith

Pam Kohli Jacobson, WSBA No. 31810
Ryan W. Edmondson, WSBA No. 41651
Michael W. Meredith, WSBA No.
45264 K&L GATES LLP
925 4th Ave., Suite 2900
Seattle, WA 98104
Phone: (206) 370-7605
pam.jacobson@klgates.com
ryan.edmondson@klgates.com
michael.meredith@klgates.com

*Attorneys for Plaintiff
Mountaineers Foundation*

MILLER NASH GRAHAM & DUNN LLP

By /s/ Daniel J. Oates

Daniel J. Oates, WSBA No. 39334
Vanessa L. Wheeler, WSBA No. 48205
Kent Michael Fandel, WSBA No. 16281
MILLER NASH GRAHAM & DUNN LLP
Pier 70, 2801 Alaskan Way, Suite 300
Seattle, WA 98121 Tel: (206) 624-8300
dan.oates@millernash.com
vanessa.wheeler@millernash.com
michael.fandel@millernash.com

*Attorneys for Defendant
The Mountaineers*

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: 1-26-2021



Honorable Judge Theresa L Fricke
United States Magistrate Judge